

REMARKS:

In the foregoing amendments, claim 1 was amended to better define applicant's invention, which amendments included defining that the structures of the counter weight in applicant's claims are integrally formed by casting. Claims 2 and 3 were rewritten as independent claims including all the limitations of claim 1 from which they depended. Claims 5 and 7 were amended to correct topographical and idiomatic errors.

Claims 10-14 were kindly allowed in the outstanding Office action. The Official action objected to claims 2-4 as containing allowable subject matter, and stated that these would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. In the foregoing amendments, claims 2 and 3 were rewritten as independent claims including all the material limitations of original claim 1 from which they depended. Claim 4 depends from claim 3. For these reasons, a formal allowance of claims 2-4 is respectfully requested.

In summary, claims 1-15 are pending in the application at this time. Claims 10-14 were allowed, and objected claims 2-4 were rewritten in condition for allowance. Therefore, claims 2-4 and 10-14 are in condition for allowance. The remaining claims 1, 5-9, and 15 were rejected over prior art, which rejection will be discussed below.

The Official action objected to the drawings as failing to comply with 37 C.F.R. § 1.84(p)(4) because reference character "16" was used to designate both

a "bolt" and the "canopy attachment base." Together with this response, applicant is filing a Transmittal of Drawings including one sheet of replacement drawings encompassing Fig. 3. In the replacement sheet of drawings, the reference character "16" was changed to reference character "26." By this change to applicant's drawings, reference character "16" consistently refers to a "bolt," while reference character "26" consistently refers to the "canopy attachment base." Along these lines, page 9 of applicant's specification was amended to describe that reference character "16" refers to a "bolt." For these reasons, applicant respectfully requests that the examiner reconsider and withdraw the objection to the drawings as set forth in the outstanding Office action.

Section 2 on page 2 of the Official action set forth an objection to claims 5 and 7, where the Official action kindly set forth suggestions for removing the objection. In the foregoing amendments, claim 7 was amended as recommended in the outstanding Office action. Claim 5 was amended in the foregoing amendments to more clearly define that the canopy includes three separate structures of a roof, a left support member for supporting the roof, and a right support member for supporting the roof. Based on these amendments, applicant respectfully requests that the examiner reconsider and withdraw the objection to the claims as set forth in the Office Action.

Claims 1, 5-9, and 15 were rejected under 35 U.S.C. §102(b) as being anticipated by Ohashi (JP 2000-309946). This rejection is set forth on page 3

of the Official action. Applicant respectfully submits that the teachings of Ohashi do not disclose or suggest the invention as set forth in present claims 1, 5-9, and 15 within the meaning of 35 U.S.C. §102(b) or 35 U.S.C. §103(a) for at least the following reasons.

Present claim 1 defines a work vehicle comprising, *inter alia*, a counter weight that is integrally formed by casting. The counter weight of the work vehicle in applicant's claims includes an outer surface thereof formed in a substantially arc shape, a lower section with an extended portion extending in leftward and rightward directions and having a substantially arc shape, tip ends of the extended portion and a lower part of a center section of the counter weight are provided with a lower attachment base, and an upper face of the counter weight is provided with a canopy attachment base. In other words, present claim 1 defines the counterweight as a single structure, such as shown in figure 4 of the present application.

The counter weight proposed by Ohashi includes separate structures, such as items 8b, 8c, 17, 18a, and 18b shown in figure 3 therein. Therefore, the counterweight proposed by Ohashi is not a single member that is integrally formed together with supports for the canopy as required in present claim 1. For this reason alone, applicant respectfully submits that the invention set forth in present claim 1 is patently distinguishable from the teachings of Ohashi.

The Official action commented that the English abstract of Ohashi does not disclose the method used to manufacture the counterweight and the lower attachment member proposed therein. However, the Official action took the position that since the claims are directed to structure and not the process, the items need only to be capable of being made by the claimed process. The applicant does not understand this statement in the Official action and request clarification thereof. There must be a reason or motivation or understanding by those skilled in the art that the structure proposed by Ohashi, which the Official action equated to applicant's claimed invention, could be made by casting. Normally, tubular members such as 18a in Ohashi are not made by casting, because it is difficult to make such members by casting. Further, if member 18a of Ohashi could be manufactured by casting, its strength would be diminished due to its complicated structure. The support members of the presently claimed invention are straight in shape, because they must have high strength for supporting the canopy. For the same reason, the support members of the presently claimed invention must be made of material of high-strength that is sufficient for supporting the canopy. Manufacturing the support members by casting, as presently claimed, meets these strength requirements, whereas the bended tubular members proposed by Ohashi cannot meet these strength requirements. For this reason, applicant respectfully submits that the limitations in present claim 1 that the counterweight and the support members for the canopy are made by casting

patently distinguishes the presently claimed invention from the teachings of Ohashi.

The device proposed by Ohashi requires a larger number of parts and steps for manufacturing the counter weight, when compared to the claimed invention. Therefore, Ohashi requires a longer time and higher cost to assemble the counterweight proposed therein, when compared to the presently claimed invention. Thus, the presently claimed invention provides significant advantages over the device proposed by Ohashi.

Applicant respectfully submits that the limitation in applicant's claims that the presently claimed counterweight that is integrally formed by casting is an important limitation that must be considered when determining the patentability of this claimed invention. This limitation cannot be simply dismissed because it is presented in an apparatus claim. Applicant respectfully submits that dismissing or not fully considering the method limitation in applicant's claims that the counterweight is formed by casting, because the claims are apparatus claims, is a *per se* rule of patentability. The problem with such "rules of patentability" (and the ever-lengthening list of exceptions which they engender) is that they tend to cloud the ultimate legal issue --obviousness-- and exalt the formal exercise of squeezing new factual situations into preestablished pigeonholes. The Court of Appeals for the Federal Circuit explicitly stated in *In re Ochiai*, 37 USPQ2d 1127, 1131 (1995), that there are no such *per se* rules of nonobviousness. This case required that to

determine whether an invention would have been novel or obvious in light of the prior art requires one to compare the claimed "subject matter as a whole". 37 USPQ2d at 1131. Since no teachings were cited against applicant's claims that remotely contemplate or suggest the counter weight including the support members for the canopy are made by casting as set forth in claim 1, applicant respectfully submits that this claim must be patentable.

With respect to claim 5, the Official action stated that support members (8b) are spaced wider than the width of the operator's seat (16). However, viewing figure 3 of Ohashi, it is readily apparent that the spacing between the left and right support members (8b) is not wider than the seat. Therefore, applicant respectfully submits that the teachings of Ohashi cannot contemplate or suggest the structure that the left and right support members are disposed with an interval therebetween wider than a width of the operator seat, and the left and right support members are positioned in lateral sides of the operator seat and at direct lateral regions or rear regions of the operator seat, as required in claim 5. The spacing of applicant's claimed invention provides superior attachment strength for the canopy and superior roll over protection of the operator of the vehicle, when compared to the device proposed by Ohashi. For these reasons, applicant respectfully submits that claim 5, as well as claims 6-9 and 15 that depend directly or indirectly thereon, are patentably distinguishable from the teachings of Ohashi. Therefore, applicant respectfully requests that the examiner reconsider and withdraw this rejection.

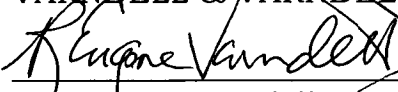
For the foregoing reasons, applicant respectfully submits that the invention set forth in present claims 1, 5-9, and 15 is patently distinguishable from the teachings of Ohashi. Therefore, applicant respectfully requests that the examiner reconsider and withdraw this rejection.

Based on the foregoing amendment and remarks, favorable consideration and allowance of claims 1, 5-9, and 15, together with claims 2-4 and 10-15, are respectfully requested.

The foregoing is believed to be a complete and proper response to the Official action mailed October 15, 2004. While it is believed that all the claims in this application are in condition for allowance, should the examiner have any comments or questions, it is respectfully requested that the undersigned be telephoned at the below listed number to resolve any outstanding issues.

In the event that this paper is not timely filed, applicant hereby petitions for an appropriate extension of time. The Commissioner is hereby authorized to charge the fee therefor, as well as any deficiency in the payment of the required fee(s) or credit any overpayment, to our Deposit Account No. 22-0256.

Respectfully submitted,
VARNDELL & VARNDELL, PLLC


R. Eugene Varndell, Jr.
Attorney for Applicants
Registration No. 29,728

Atty. Case No. VX032568
106-A South Columbus Street
Alexandria, VA 22314
(703) 683-9730

\\V:\Vdocs\W_Docs\Feb05\P052-2568 RS.doc